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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,085	09/05/2003	Christopher T. Zirps	B0751/7032	9935
22832	7590	08/30/2005	EXAMINER	
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP (FORMERLY KIRKPATRICK & LOCKHART LLP) 75 STATE STREET BOSTON, MA 02109-1808			FLANAGAN, BEVERLY MEINDL	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/656,085	ZIRPS ET AL.	
	Examiner	Art Unit	
	Beverly M. Flanagan	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-10 and 12 is/are rejected.
- 7) ☒ Claim(s) 5, 7 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

*Beverly M. Flanagan*  
**BEVERLY M. FLANAGAN**  
**PRIMARY EXAMINER**

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/04, 7/04 &amp; 7/04</u> . | 6) <input type="checkbox"/> Other: ____  |

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## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statements filed June 4, 2004, July 2, 2004 and July 26, 2004 have been made of record and the references cited therein have been considered by the examiner.

### ***Preliminary Amendment***

The preliminary amendment filed July 24, 2004 has been entered and made of record.

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: In claim 10, line 1, there should be an "of" between "method" and "operating". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 8-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Long (U.S. Patent Application Publication No. 2002/0177847).

**In regard to claims 1-3 and 6**, Long teaches an endoscopic ablation system 10 mounted on a flexible endoscope 12 where the system 10 includes an ablation cap 20 that fits over the distal end of the flexible shaft 32 of the endoscope (see Figure 1). A handpiece 16 connects to the proximal end of electrodes 18, that constitute control sheaths extending between the ablation cap 20 and the handpiece 16 and are connectable to the shaft 32 of the endoscope 12 via flexible clips 30 (see Figure 1). As broadly as claimed, Long discloses that the handpiece 16 is configured to be mounted laterally to the shaft 32 of the endoscope between the proximal and distal ends, at flexible clips 30 provide a means for such both a slidable and removeable attachment.

**In regard to claims 4 and 8**, Figure 1 shows that the electrodes 18 extend externally of the endoscope shaft 32 and that handpiece 16 is configured to be comfortably grasped together by a user's hand with a portion of the associated endoscope shaft 32. **In regard to claim 9**, Long teaches at least two control elements for operating at least two control functions of the electrodes 18 (e.g., actuator 90 and timer 91). **In regard to claim 10**, Figure 1 shows the handpiece 16 being operated by one hand and the endoscope controls being operated by the other hand. **In regard to claim 12**, it is inherent in the structure disclosed by Long that the electrodes 18 can be repositioned along the endoscope shaft 32.

***Allowable Subject Matter***

Claims 5, 7 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should note the following prior art references: Ouchi, U.S. Patent No. 6,520,954 and Bendall, U.S. Patent Application Publication No. 2003/0212308.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Beverly M. Flanagan  
Primary Examiner  
Art Unit 3739

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